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11 OF CALIFORNIA, INC. and MARCUS LOPEZ

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 M.S., an Individual by and through his
15 Guardian Ad Litem, MARY RODGERS-
16 VEY; *et al.*,

17 Plaintiffs,

18 vs.

19 COUNTY OF VENTURA; *et al.*,

20 Defendants.

Case No. 16-03084-BRO-RAO

**DEFENDANTS MHM SERVICES OF
CALIFORNIA, INC. AND MARCUS
LOPEZ'S NOTICE OF EX PARTE
APPLICATION SEEKING POST-
FILING RELIEF FROM THE
COURT'S STANDING ORDER
CONCERNING A TEN-PAGE LIMIT
FOR THEIR REPLY IN SUPPORT OF
THEIR MOTION TO DISMISS
PLANTIFFS' FIRST AMENDED
COMPLAINT, OR IN THE
ALTERNATIVE, TO STAY THIS
ACTION; DECLARATION OF ADAM
GORDON, ESQ.**

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22 Date: October 24, 2016
23 Time: 1:30 p.m.
24 Dept.: Crtrm 14, Spring St. Level
25 Judge: Hon. Beverly R. O'Connell

26 Complaint filed: May 4, 2016
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1 PLEASE TAKE NOTICE that Defendant MHM Services of California, Inc. and
2 Defendant Marcus Lopez (together “MHM”) respectfully move this Court *ex parte*
3 seeking post-filing relief from the Court’s Standing Order setting a ten-page limit on
4 reply memoranda of points and authorities. At the time of this filing, MHM is in
5 communication with Plaintiffs’ counsel to determine whether Plaintiffs will be opposing
6 this *Ex Parte* Application.

7 The grounds for this *Ex Parte* Application are as follows:

8 1. There is insufficient time for a regularly noticed motion seeking the relief
9 sought herein prior to the filing deadline for MHM’s Reply Memorandum in Support of
10 Motion to Dismiss Plaintiffs’ First Amended Complaint (“Reply”). The Reply was due
11 October 11, 2016, and was through oversight of counsel, filed on October 11, 2016
12 outside of compliance with the Court’s ten-page limit for replies. See ECF No. 56.

13 2. On or before October 11, 2016, the undersigned counsel failed to notice in
14 the Court’s Standing Order the reply page limit, and filed the Reply totaling 15 pages.
15 **Counsel for MHM apologizes for this oversight, and for any burden that this**
16 **causes the Court and its staff.** MHM respectfully requests relief in allowing the Reply
17 to exceed the ten-page limit.

18 3. MHM would have otherwise had good cause to request relief from the ten-
19 page limit on the following grounds:

20 (a) Plaintiffs’ First Amended Complaint contains seven claims against
21 numerous defendants, including Defendant MHM Services of California,
22 Inc. and Defendant Marcus Lopez. Many of the claims presented are
23 highly technical and complex, and require significant scrutiny of the
24 applicability of the corresponding elements. The nature of these claims
25 requires a thorough analysis of the alleged role that MHM plays in the IST
26 defendant competency process, and why such a role is not the basis for
27 MHM’s liability.
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1 (b) Plaintiffs' Opposition to MHM's Motion to Dismiss presented numerous
2 arguments as to each claim (besides the Rehabilitation Act claim which
3 Plaintiffs agreed to dismiss without prejudice). ECF No. 49. Plaintiffs'
4 Opposition was 23 pages in length, and the Reply attempted to address in
5 parallel fashion of Plaintiffs' arguments as to each claim in order to best
6 and most efficiently frame the issues before the Court.

7 (c) Although Defendant MHM Services of California, Inc. and Defendant
8 Marcus Lopez may have been entitled to file two separate memoranda of
9 points and authorities in support of two separate motions to dismiss the
10 FAC, MHM filed one consolidated motion to dismiss and one
11 memorandum of points and authorities totaling only 19 pages in
12 conformance with Local Rule 11.6 and this Court's Standing Order. See
13 ECF Nos. 38, 38-1.

14 (d) Similarly, MHM did not file two separate replies, and instead filed a single
15 reply for both Defendant MHM Services of California, Inc. and Defendant
16 Marcus Lopez, totaling 15 pages.

17 (e) MHM's counsel apologizes to the Court for its lack of conformity with the
18 Court's Standing Order. MHM's counsel understands that the proper
19 procedure for seeking relief from the Court's ten-page limit would have
20 been to file this *Ex Parte* Application before the Reply.

21 4. MHM respectfully requests relief in allowing the Reply to exceed the ten-
22 page limit because of its counsel's oversight.

23 5. In the alternative, MHM respectfully requests an opportunity to file a Reply
24 no longer than ten pages by Friday, October 21, 2016.

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1 This Notice of *Ex Parte* Application and *Ex Parte* Application is based on this
2 Notice, the accompanying Memorandum of Points and Authorities, the documents on
3 file with the Court, such other records and documents of which the Court may be
4 requested to take judicial notice, and any oral argument to the extent the Court deems
5 such argument necessary.

6
7 Dated: October 18, 2016

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

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9
10 By: /s/ Adam Gordon

Neal P. Panish, Esq.

Adam Gordon, Esq.

Attorneys for Defendants, MHM SERVICES OF
CALIFORNIA, INC. and MARCUS LOPEZ

MEMORANDUM OF POINTS AND AUTHORITIES

First, the undersigned counsel apologizes to the Court for his lack of attention in reviewing the Court's Standing Order.

The Court's Standing Order limits reply briefs to ten pages, absent leave of court. Standing Order, ¶ 5(c), at 4. "All federal courts are vested with inherent powers enabling them to manage their cases and courtrooms effectively and to ensure obedience to their orders." F.J. Hanshaw Enterprises, Inc. v. Emerald River Development, Inc., 244 F.3d 1128, 1136 (9th Cir. 2001). Included in this discretion is the ability "to grant leave to exceed the page limits set forth in the Civil Local Rules." Traylor Bros. v. San Diego Unified Port Dist., Case No. 08-CV-1019-L WVG, 2012 WL 1019966, at *2, citing United States v. W.R. Grace, 526 F.3d 499, 506 (9th Cir. 2008).

On or before October 11, 2016, the undersigned counsel for MHM failed to notice and properly review the Court's Standing Order, and filed the Reply of 15 pages. Declaration of Adam Gordon ("Gordon Decl."), at ¶ 2; and ECF No. 56. On October 17, 2016, the undersigned counsel first realized this error in reviewing the ECF filings and the State Defendants' Notice of *Ex Parte* Application Seeking Post-Filing Relief from the Court's Standing Order Concerning a Ten-Page Limit for Their Reply in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint, or in the Alternative, to Stay this Action. Gordon Decl., at ¶ 3; ECF No. 53. The undersigned counsel apologizes to the Court and its staff for any burden caused by the Reply. Gordon Decl., at ¶ 4.

On October 17, 2016, the undersigned counsel contacted Mr. Vogel, one of the counsel for Plaintiffs, via voice message and email to determine whether Plaintiffs would be opposing this *Ex Parte* Application. Gordon Decl., at ¶ 5. On October 18, 2016, the undersigned counsel followed up with Mr. Vogel and Ms. Quest via email regarding their position. *Id.* That same day, Mr. Vogel kindly informed the undersigned counsel via email that he would reply officially as soon as possible, but could not confirm Plaintiffs' position until speaking with another of his co-counsel which likely

1 would not occur until the morning of October 19, 2016. Id. The undersigned counsel
2 appreciates the efforts made by Plaintiffs' counsel to respond to MHM's request. Id.
3 Due to the approaching hearing date, MHM's counsel made the decision to file this *Ex*
4 *Parte* Application as soon as possible, and will update the Court regarding Plaintiffs'
5 position as soon as it is confirmed. Id.

6 MHM would have had good cause to request relief from the ten-page limit based
7 on the complexity of Plaintiffs' FAC and the issues before the Court. The FAC includes
8 seven claims, all of which sought relief against MHM. FAC, ECF No. 17. Many of the
9 claims presented are highly technical and complex, and require significant scrutiny of
10 the applicability of the corresponding elements, and why such a role is not the basis for
11 MHM's liability. The nature of these claims requires a thorough analysis of the alleged
12 role that MHM plays in the IST defendant competency process. The Reply attempted to
13 mirror the initial moving papers and Opposition in order to put the issues before the
14 Court in the most practical and efficient means possible. While Defendant MHM
15 Services of California, Inc. and Defendant Marcus Lopez may have been entitled to file
16 separate memoranda of points and authorities in support of two separate motions to
17 dismiss, MHM only filed a single, consolidated motion to dismiss and accompanying
18 memorandum of points and authorities totaling only 19 pages in conformance with
19 Local Rule 11.6 and this Court's Standing Order. See ECF No. 38, 38-1. Similarly,
20 MHM did not file two separate replies, and instead filed a single reply for both
21 Defendant MHM Services of California, Inc. and Defendant Marcus Lopez, totaling 15
22 pages. MHM's counsel understands that the proper procedure for seeking relief from
23 the Court's ten-page limit would have been to file this application before the Reply.
24 MHM respectfully requests post-filing relief from the Court's Standing Order. Gordon
25 Decl., at ¶ 6. In the alternative, MHM respectfully requests an opportunity to file a
26 Reply no longer than ten pages by Friday, October 21, 2016.

1 **CONCLUSION**

2 For the reasons stated above, MHM respectfully requests that this Court grant
3 their *Ex Parte* Application for post-filing relief from the Court's Standing Order. In the
4 alternative, MHM respectfully requests an opportunity to file a Reply brief no longer
5 than ten pages by Friday, October 21, 2016.

6
7 Dated: October 18, 2016

SELTZER CAPLAN MCMAHON VITEK
A Law Corporation

8
9 By: /s/ Adam Gordon

10 Neal P. Panish, Esq.

11 Adam Gordon, Esq.

12 Attorneys for Defendants, MHM SERVICES OF
13 CALIFORNIA, INC. and MARCUS LOPEZ
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DECLARATION OF ADAM GORDON, ESQ.

I, Adam Gordon, declare the following:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am an Associate with the law firm of Seltzer Caplan McMahon Vitek, counsel for Defendant MHM Services of California, Inc. and Defendant Marcus Lopez. As such, I have personal knowledge of the facts stated herein:

2. On or before October 11, 2016, I failed to properly review the Court's Standing Order, and filed the Reply totaling 15 pages.

3. On October 17, 2016, I first realized this error in reviewing the ECF filings and the State Defendants' Notice of *Ex Parte* Application Seeking Post-Filing Relief from the Court's Standing Order Concerning a Ten-Page Limit for Their Reply in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint, or in the Alternative, to Stay this Action.

4. I sincerely apologize to the Court and its staff for any burden caused by the non-conforming Reply. MHM seeks the Court's lenience in relieving MHM of the ten-page limit.

5. On October 17, 2016, I contacted Mr. Brian Vogel, one of the counsel for Plaintiffs, via voice message and email to determine whether Plaintiffs would be opposing this *Ex Parte* Application. On October 18, 2016, I followed up with Mr. Vogel and Ms. Quest via email regarding their position. That same day, Mr. Vogel kindly informed me via email that he would reply officially as soon as possible, but could not confirm Plaintiffs' position until speaking with another of his co-counsel which likely would not occur until the morning of October 19, 2016. I appreciate the efforts made by Plaintiffs' counsel to respond to MHM's request. Due to the approaching hearing date, I made the decision to file this *Ex Parte* Application as soon as possible, and will update the Court regarding Plaintiffs' position as soon as it is confirmed.

1 6. I will comply in the future with the proper procedure for seeking relief
2 from the Court's ten-page limit by filing such an *Ex Parte* Application in advance to the
3 filing of a reply.

4 I declare under penalty of perjury under the laws of the United States and the
5 State of California that the foregoing is true and correct and that this declaration was
6 executed in San Diego, California on the below date.

7
8 Dated: October 18, 2016

/s/ Adam Gordon

Adam Gordon, Esq.

CERTIFICATE OF SERVICE
M.S., et al. v. COUNTY OF VENTURA, et al.
Case No. 2:16-cv-03084-BRO-RAO

I hereby certify that on October 18, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS MHM SERVICES OF CALIFORNIA, INC. AND MARCUS LOPEZ'S NOTICE OF EX PARTE APPLICATION SEEKING POST-FILING RELIEF FROM THE COURT'S STANDING ORDER CONCERNING A TEN-PAGE LIMIT FOR THEIR REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLANITIFFS' FIRST AMENDED COMPLAINT, OR IN THE ALTERNATIVE, TO STAY THIS ACTION; DECLARATION OF ADAM GORDON, ESQ.

I certify that all participants in the above entitled case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on October 18, 2016, at San Diego, California.

By: Laurie Holman
Laurie Holman